

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

PETER D. KINDER, <i>et al.</i> ,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 1:10-cv-00101-RWS
)	
TIMOTHY F. GEITHNER, <i>et al.</i>)	
)	
Defendants)	
_____)	

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL DEFENDANTS TO ANSWER

Under Rule 12(a)(2), Federal Rules of Civil Procedure, where, as here, the defendants in a civil case are officers of the United States sued in their official capacity, an answer, motion to dismiss, or other response to a complaint is due "60 days after service on the United States attorney." Plaintiffs argue that they served the United States attorney more than 60 days ago. Hearne Declaration ¶ 5.

However, Rule 12(a)(2) should be read in concert with Rule 4(i)(A)(i), which specifies that it is not enough to serve some United States attorney; service must be "on the United States attorney for the district in which the action is brought." (Emphasis supplied). Plaintiffs' argument that they have served the United States attorney cites as evidence Exhibit E to the Hearne Declaration. That exhibit shows service on the United States attorney for the District of Columbia. However, the "district in which the action is brought" is the Eastern District of Missouri. There is

no evidence that the United States attorney for the Eastern District of Missouri has been served.

Accordingly, the time for defendants to answer, move to dismiss, or otherwise respond to the amended complaint has not yet expired.

Respectfully submitted,

TONY WEST
Assistant Attorney General

RICHARD G. CALLAHAN
United States Attorney

SHEILA M. LIEBER
Deputy Branch Director

/s/ Brian G. Kennedy
BRIAN G. KENNEDY (D.C. Bar No. 228726)
United States Department of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20530
Tel.: (202) 514-3357 Fax: (202) 616-8470
Email: Brian.Kennedy@usdoj.gov